IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

WP(C).No. 19925 of 2007(V)

AGAINST THE ORDER IN EP.99/2005,EA.274/2006 IN OS.476/2003 of MUNSIFF COURT, MAVELIKKARA
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PETITIONER:

RAJAGOPAL.
PARVATHI VILASAM,KANDIYOOR,
MAVELIKKARA.

BY ADV. SRI.P.B.SAHASRANAMAN
SRI.K.JAGADEESH
SRI.T.S.HARIKUMAR

RESPONDENTS:
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1. **SURAJ, @ SURESH,PROPRIETOR,SREELEKSHMI CHITTY FUND,SARASWATHI BHAVANAM,EREZHA NORTH, CHETTIKULANGARA, MAVELIKKARA.**

2. **USHA SURAJ,WIFE OF SURAJ, SARASWATHI BHAVANAM, EREZHA NORTH,CHETTIKULANGARA,MAVELIKKARA.**

3. **BABU,BABU VILLA, PERINGALA, CHETTIKULANGARA,MAVELIKKARA.**

4. **G.SAJI,THADIYAN PARAMBIL, EREZHA THEKKU,CHETTIKULANGARA.**

5. **K.VISWANATHA PILLAI, PUTHEN THARAYIL, EREZHA THEKKU, CHETTIKULANGARA.**

6. **PRABHAKARAN,PRAHBA BHAVANAM, EREZHA THEKKU,CHETTIKULANGARA.**

7. UNNI, USHA BHAVANAM, EREZHA THEKKU,
CHETTIKULANGARA.

8. ANIL KUMAR,LEKSHAM VEEDU,
EREZHA THEKKU,CHETTIKULANGARA.

9. THANKAMANI,ILAYASSERI,EREZHA THEKKU,
CHETTIKULANGARA.

10. LEELA RAVI,PLAVALLATHIL,EREZHA THEKKU,
CHETTIKULANGARA.

11. VINOD,VILAYIL THEKKETHIL,EREZHA THEKKU
CHETTIKULANGARA.

12. HARIDAS,ASSARISSERIL,EREZHA THEKKU,
CHETTIKULANGARA.

13. SREELEKSHMI,D/O.LEKSHAM VEEDU,
EREZHA THEKKU,CHETTIKULANGARA
REPRESENTED BY ITS PRABHAKARA KURUP.

14. ANIL KUMAR,KARIKULANGARA,EREZHA THEKKU,
CHETTIKULANGARA.

15. PARU,MINOR REPRESENTED BY RAJAMMA AS
NEXT FRIEND AND GUARDIAN,
D/O.RAJAMMA,RADHIKA BHAVANAM,PERINGALA.

16. LISSY,THAYYIL PUTHENVEEDU,
EREZHA THEKKU CHETTIKULANGARA.

17. ROY.T.THAYYIL PUTHENVEEDU EREZHA
THEKKU,CHETTIKULANGARA.

18. SHIBU.T.,THAYYIL PUTHENVEEDU,
EREZHA THEKKU,CHETTIKULANGARA.

19. BIJU, THAYYIL PUTHENVEEDU,
EREZHA THEKKU,CHETTILULANGARA.

20. KRISHNAN, VANMELIL MURIYIL,
EREZHA THEKKU,CHETTIKULANGARA.

21. PONNAMMA,AKHIL BHAVANAM,EREZHA THEKKU,
CHETTIKULANGARA.

22. MOHAN,AKHIL BHAVANAM,EREZHA THEKKU,
CHETTIKULANGARA.

23. CHELLAMMA,ALTHARA THEKKETHIL,
EREZHA THEKKU,
CHETTIKULANGARA.

24. RADHAKRISHNAN,VISHNU VIHAR,
EREZHA THEKKU,
CHETTIKULANGARA.

25. VASUDEVAN PILLAI,KARUKATHARAYIL,
EREZHA THEKKU,CHETTIKULANGARA.

26. RAJENDRAN,MANGALATHU THEKKETHIL,
EREZHA THEKKU,CHETTIKULANGARA.

27. MANIKANTAN,
MAHESH BHAVANAM,EREZHA THEKKU,
CHETTIKULANGARA.

28. MOHANAN PILLAI,KALLELIL THARAYIL,
EREZHA THEKKU,CHETTIKULANGARA.

29. MATHEW.M.,THAYYIL VEEDU,EREZHA THEKKU,
CHETTIKULANGARA.

30. SIVARAMAN,CHAYITHRA VADAKKETHIL,
EREZHA THEKKU,CHETTIKULANGARA.

31. PATHMAKARAN,PUZHKARALAYAM,EREZHA THEKKU

32. KRISHNA PILLAI, KALLEKATHARAYIL,
EREZHA THEKKU,CHETTIKULANGARA..

33. SARALA.S. PILLAI, SARITHA NIVAS, EREZHA
THEKKU,CHETTIKULANGARA.

34. SASIDHARAN PILLAI, SARITHA NIVAS,
EREZHA THEKKU,CHETTIKULANGARA.

35. NANIKUTTY AMMA,PEROOR, PERINGLA,
EREZHA THEKKU,CHETTIKULANGARA.

36. RAMESAN,UDAYA BHAVANAM,EREZHA THEKKU,
CHETTIKULANGARA.

37. THANKAMMA,ELAPPALLIL, EREZHA THEKKU,
CHETTIKULANGARA.

38. VEENAMOL,MINOR, REPRESENTED BY HER
FATHER NANDAGOPAL AS NEXT FRIEND AND
GUARDIAN,THRIVENI, EREZHA THEKKU,CHETTIKULANGARA.

39. GOPALAKRISHNAN NAIR, PUTHUVILAYIL,
EREZHA THEKKU,CHETTIKULANGARA.

40. NANDAGOPAL,THRIVERI,EREZHA THEKKU,
CHETTIKULANGARA.

**41. SUNIL KUMAR.J,CHANKUVILA VADAKKETHIL,
EREZHA THEKKU,CHETTIKULANGARA.**

**42. VIDYA,REPRESENTED BY HER MOTHER
JAYASREE AS NEXT AND GUARDIAN,PLAVILAYIL,
EREZHA THEKKU,CHETTIKULANGARA.**

**43. JOMOL, REPRESENTED BY HER MOTHER
ROSAMMA JOY AS NEXT FRIEND AND GUARDIAN,
EREZHA THEKKU,CHETTIKULANGARA.**

**44. AISWARYA, REPRESENTED BY HER MOTHER
ANANDAVALLY AS NEXT FRIEND AND GUARDIAN,
MANNATHUVILAYIL VADAKKETHIL,
EREZHA THEKKU,CHETTIKULANGARA.**

**45. GOPALAKRISHNAN,
MANNATHUVILAYIL VADAKKETHIL,
EREZHA THEKKU,CHETTIKULANGARA.**

**46. G.SANTHOSH KUMAR,LEKSHAM VEEDU,
EREZHA THEKKU,CHETTIKULANGARA.**

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 19925 OF 2007

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Dated this the 29th day of June, 2007.

J U D G M E N T

This writ petition is filed seeking to set aside the order passed in E.A.274/06 in E.P.99/05 in O.S.476/03. The decree holder in execution of the decree wanted 2.5 Ares of land belonging to the judgment debtor to be sold in auction for the realisation of the amount.

2. This execution application is filed by 44 persons seeking to adjourn the sale on the ground that the creditors of the counter petitioner have filed I.P.3/06 before the Sub Court and has also filed a receiver application for taking over the properties of the counter petitioner. The learned counsel for the writ petitioner submits that unless and until an order of adjudication as contemplated under section 28 of the Insolvency Act is made, it is not fair on the part of the Court to stop the sale. The insolvency petition had already been filed and it is pending adjudication. There are 44 creditors and in case the counter petitioner is to be adjudged as insolvent, all his properties are liable to vest in the Official Receiver and the creditors will be only entitled to

proportionate amount which is derived from the sale of the properties. One creditor shall not have undue precedence over the other in a case of this nature. So taking into consideration these broad principles of insolvency law, the learned Munsiff has postponed the sale. If the present decree holder has got a contention that the insolvency petition is filed only to defeat him, being a creditor he can also join as a party in the I.P.3/06 and get the petition dismissed and thereafter proceed with the sale of the property. Therefore, I do not find any illegality or irregularity committed by the Court below in postponing the sale and therefore the said order is confirmed and the writ petition is dismissed.

M.N. KRISHNAN, JUDGE.

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